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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,828	10/12/2000	James Paschal McCloskey	MSX 302RI	9910

7590 05/06/2004

Kolisch Hartwell Dickinson McCormack & Heuser  
520 S W Yamhill Street  
Suite 200  
Portland, OR 97204

EXAMINER
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RODRIGUEZ, JOSEPH C

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/687,828

Applicant(s)

MCCLOSKEY, JAMES PASCHAL

Examiner

Joseph C Rodriguez

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 23, 24, 26-31, 33-44 and 46-51 is/are rejected.
- 7) ☒ Claim(s) 5-22, 25, 32, 45, 52 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2000 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

In response to Applicant's arguments of 1/12/2004, the claims have been rejected as follows:

The 35 U.S.C. 112, second paragraph, rejections are maintained or modified as follows:

The rejections under 35 U.S.C. 112, second paragraph, have been withdrawn.

The 35 U.S.C. 251 rejections are maintained or modified as follows:

The 35 U.S.C. 251 improper recapture rejections have been withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 23, 24, 26-31, 33-44 and 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhmonen in view of Jenkins et al. ("Jenkins")(GB '613 A).

Kuhmonen teaches an apparatus (Fig. 1-6 and 14) comprising a chassis (near 12), a trommel (20), input means (19), output means (near collection chute 22 and 24, 120) and a pivotable stockpiling conveyor (26; col. 3, ln. 15 et seq.).

Kuhmonen as set forth above thus teaches all that is claimed except for expressly teaching a two-part conveyor with a second part pivotally attached to the first

Art Unit: 3653

part, wherein said second part pivots about a perpendicular horizontal axis and wherein said parts extend between a position upwardly and outwardly from the chassis and a retracted position where the second part extends over the chassis. Jenkins (Fig 1-3) teaches that this type of pivotable, extendable conveyor system is well known by teaching a first (near 1, 8 before pivot point) connected to a pivotable second (6) conveyor (Fig. 2, 3). Moreover, Jenkins teaches that this type of conveyor feature allows for space savings by storing the conveyor in a retracted vertical position when not in operation (p. 1). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Kuhmonen with the pivotable second conveyor section taught by Jenkins to achieve space savings during storage.

### ***Allowable Subject Matter***

Claim 52 is allowed.

Claims 5-22, 25, 32 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Objections***

Claims 1-52 are objected to under 37 CFR 1.173, as being of improper form. Applicant is required to cancel the claims, or amend the claims to place the claims in proper form.

Here, the claims presented in the amendment of 1/12/04 are not in compliance with 37 CFR 1.173. In accordance with 37 CFR 1.173(b)(2) and (d), any changes to the specification, including the claims, must include specific markings in the submitted version of the claims. That is, two versions (actual amendments + "version with markings") are not to be submitted, but one version with the appropriate markings. If the original claims are unamended, they should be reinstated and not represented.

Further, in accordance with 37 CFR 1.173(c), an "explanation of the support in the disclosure" must be indicated for all changes, including all features of all new claims.

Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,819,950 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Further, in accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed if Applicant chooses to make amendments to the application.

That is, an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1), that also encompasses the amendments, that contains a statement that all amendments made since the filing of the reissue were made without any deceptive intention on the part of the applicant (see 37 CFR 1.175 and MPEP § 1414) would overcome a rejection under 35 U.S.C. 251.

### ***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571 or 703-308-6552**.

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.


Application/Control Number: 09/687,828

Page 6

Art Unit: 3653

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April 28, 2004

  
DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600